

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SOUTH CAROLINA COASTAL)	
CONSERVATION LEAGUE; et al.,)	No. 2:18-cv-03326-RMG
)	(Consolidated with 2:18-cv-03327-RMG)
Plaintiffs,)	
)	
v.)	PLAINTIFFS' OPPOSITION TO
)	FEDERAL DEFENDANTS' MOTION
WILBER ROSS, in his official capacity as)	FOR A 502(d) ORDER
secretary of commerce; et al.,)	
)	
Defendants.)	
)	

Plaintiffs, City of Beaufort, et al., object to the Federal Defendants' motion for entry of an order pursuant to Federal Rule of Evidence 502(d). Plaintiffs join in and incorporate by reference the Environmental Plaintiffs' Opposition, ECF 364.

The Order with which Federal Defendants are attempting to comply requires the production of documents "containing factual information relied on or considered" in reaching its decisions at issue here and documents and information "shared or received between agencies or with non-agency third-parties that were considered." Order at p. 9 (ECF 352). It is doubtful that either category of documentation would include attorney-client or work-product protected materials.

Moreover, the Order requires Federal Defendants not only to complete the administrative record but also to submit a privilege log, which lists all documents withheld on the basis of the deliberative process privilege. Order at p. 9 (ECF 352). Thus, the Order already requires a thoughtful, non-cursory review of documentary materials to ascertain if the deliberative process privilege applies and some specificity in identifying withheld materials in the privilege log. It is

reasonable to expect that a review for attorney-client privilege and work-product protection could and would be completed at the same time the other, thorough review for the deliberative process privilege is conducted. Federal Defendants claim, however, that they are unable to conduct a “page-by-page pre-production privilege review[.]” (ECF 362, Motion at p. 1) Municipal Plaintiffs are concerned that Federal Defendants’ review for the deliberative process privilege ordered by this Court previously may likewise be insufficiently thorough if their Motion is granted and they are allowed to claim inadvertent disclosure broadly and regardless of the reasonableness of the review actually undertaken.

The Federal Defendants have had, as the Environmental Plaintiffs state, over a year with knowledge they would be required to produce the administrative record in this case and had ample opportunity to review their internal documents for privilege. Notwithstanding this extended amount of time, counsel is already required to appropriately address any inadvertent production of documents subject to privilege and the Defendants’ proposal creates unnecessary and significant complications to these proceedings.

Respectfully submitted this 16th day of March, 2020.

s/ Amy E. Armstrong

Amy E. Armstrong (ID # 9625)

Leslie S. Lenhardt (ID # 7795)

Benjamin Cunningham (ID # 11905)

SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

Attorneys for the Plaintiffs

Georgetown, South Carolina